IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.03.2007

Coram

The Honourable Mr.Justice P.D.DINAKARAN
and
The Honourable Mr.Justice P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.262 of 2007

The Commissioner of Income-Tax
Salem. ... Appellant

Vs.

K.Ramasamy ... Respondent

The above T.C.(Appeal) is preferred under Section 260A of the Income-Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, dated 24.2.2006 made in IT(SS)A No.84/Mds/2003 for the block assessment period 1.4.99 to 22.6.99.

For Appellant : Mr.N.Murali Kumaran
Sr. Standing Counsel

J U D G M E N T

(Delivered by P.D.DINAKARAN, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal made in IT(SS)A No.84/Mds/2003, dated 24.2.2006 for the block assessment period 1.4.99 to 22.6.99.

2.1. The brief facts of the case are stated as hereunder:-

The Revenue is the appellant and the relevant block assessment period involved is 1.4.99 to 22.6.99. The respondent/assessee is engaged in the business of manufacture and sale of cloth. Concededly, even though there was a search under Section 132 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), on 22.6.99 in the business and residential premises of the respondent/ assessee, even prior to the date of search, the assessee filed his regular returns for the previous years falling within the block period as detailed hereunder:-

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Previous year ended/ Assessment year	Date of filing of return	Income admitted
31-03-95/95-96	13-04-99	Rs. 23,830/-
31-03-96/96-97	13-04-99	Rs. 14,260/-
31-03-97/97-98	13-04-99	Rs. 55,160/-
31-03-98/98-99	13-04-99	Rs. 65,810/-
31-03-99/99-2000	11-06-2001	Rs.1,33,870/-

2.2. However, at the time of search, it was found that the respondent/assessee, Sri.K.Ramasamy, along with five others, had purchased about 4.26 acres of land from Sri.V.S.Kathirvel on 7.11.95 for a consideration of Rs.31.68 lakhs and in order to ascertain the sources for the purchase consideration, enquiries were made by the Deputy Director of Income-tax (Inv.) with the assessee. It was admitted by the assessee in his sworn statement given on 5.7.99 before the Deputy Director of Income-tax (Inv.) that he had contributed Rs.5.28 lakhs, being 1/6th share of the purchase consideration for the said piece of land. According to this statement, Rs.4.00 lakhs out of Rs.5.28 lakhs were borrowed from third parties and the assessee offered at that time to admit Rs.1.28 lakhs as his undisclosed income and to pay the tax thereon.

2.3. On the satisfaction that there were certain undisclosed incomes, action under Section 158BD of the Act was initiated and notice under Section 158 BC(a) of the Act was issued on 10.10.2000 and the same was served on the assessee on 17.10.2000. In response to the said notice, the assessee filed the return for the block assessment in Form No.2B on 4.10.2002 admitting undisclosed income of Rs.1.28 lakhs for the previous year 1995-96 falling within the block period. The case was taken up for scrutiny and after examining the documents seized during search and on hearing the submissions of the assessee, the assessing officer proceeded to make the block assessment.

2.4. The assessing officer found that for the assessment years 1997-98 and 1998-99, the regular returns were filed beyond the due date specified under Section 139(1) of the Act and hence, the incomes that were admitted for these years were also treated as undisclosed income for the respective years in terms of provisions of Section 158BB(1)(c) of the Act.

2.5. Consequently, the assessing officer computed the undisclosed income of each year comprised in the block period as under:

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Previous year ended 31-03-96/Asst. Year 96-97		
Total income returned/assessed	-	Rs. 14,317
Add: Undisclosed income admitted by the assessee	-	Rs.1,28,000
Total income including undisclosed income		Rs.1,42,317
Previous year ended 31-03-97/Asst. Year 97-98		
Total income returned	-	Rs. NIL
Add: Undisclosed income admitted by the assessee	-	Rs. 55,160
Total income including undisclosed income		Rs. 55,160
Previous year ended 31-03-98/Asst. Year 98-99		
Total income returned	-	Rs. NIL
Add: Undisclosed income admitted by the assessee	-	Rs. 65,810
Total income including undisclosed income		Rs. 65,810

The total undisclosed income for the block period was computed as under:

Previous year/ Asst. year	Total income including undisclosed income	Total income returned/ assessed
F.Y.94-95/95-96	Rs. 23,830	Rs. 23,830
F.Y.95-96/96-97	Rs.1,42,317	Rs. 14,317
F.Y.96-97/97-98	Rs. 55,160	Rs. NIL
F.Y.97-98/98-99	Rs. 65,810	Rs. NIL
F.Y.98-99/99-2000 Period ended 22-6-1999	Rs.1,33,874	Rs.1,33,874
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	Rs.4,20,991	Rs.1,72,021

2.6. The assessing officer had not taken into account the total income for the previous year relevant to the assessment years 1990-91 to 1994-95 while computing undisclosed income, since they were below taxable limit. Thus, the undisclosed income was computed at Rs.2,48,970/- (Rs.4,20,991 – Rs.1,72,021) and accordingly, the total tax payable to the tune of Rs.2,12,344/- was demanded, as per the following calculation, of course, reserving the penalty proceedings under Section 158BFA(2) of the Act, to be initiated separately:-

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Income tax at 60%	-	Rs.1,49,382
Surcharge at 15%	-	Rs. 22,407
		Rs.1,71,789
Less: Tax paid/adjusted	-	Rs. 20,000
Balance tax payable	-	Rs.1,51,789
Add: Interest u/s 158BFA(1) for 7 month @ 2% and for 17 month @ 1.25%	-	Rs. 60,555
Total Tax Payable	-	Rs.2,12,344

Accordingly, the assessing officer passed the order of demand dated 31.10.2002 under Section 158BC(c) read with 158BD of the Act.

2.7. Aggrieved by the same, the assessee preferred an appeal before the Commissioner of Income-tax (Appeals), challenging the finding of the assessing officer that since the regular returns for the assessment years 1997-98 and 1998-99 were filed beyond the due date specified under Section 139(1) of the Act, the income admitted for these years should be treated as undisclosed income for the respective years in terms of provisions of Section 158BB(1)(c) of the Act. The respondent/assessee also challenged the levy of surcharge. The Commissioner, by order dated 10.02.2003, while accepting the case of the assessee on the first point, upheld that the levy of surcharge on the tax determined on undisclosed income of Rs.1.28 lakhs.

2.8. Against the said order of the Commissioner, the Revenue preferred an appeal before the Tribunal again contending that since the returns of income for the assessment years 1997-98 and 1998-88 were filed beyond the due date specified under Section 139(1) of the Act, the incomes admitted in the said returns can be treated as undisclosed income for the block assessment in terms of the provisions of Section 158BB(1)(c) of the Act. But, the Tribunal held in favour of the assessee holding that once the return of income was filed, even though the same was filed beyond the date specified under Section 139(1) of the Act, the income admitted in the said belated returns cannot be treated as an undisclosed income for the block assessment, since that information was available with the Department even before the date of search. Hence, this appeal giving rise to the following substantial questions of law for consideration:-

> "(i) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in holding that the income disclosed in the regular returns filed by the assessee

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after the date specified under Sec.139 of the Income Tax Act is not undisclosed income ?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in not considering Section 158 BB(1)(c) of the Income Tax Act whereby the regular returns of income filed beyond the due dates specified under Sec.139(1) would be treated as undisclosed income ?"

3. Both the above questions revolve on the only point, whether the income admitted in the belated returns can be treated as an undisclosed income for the block assessment and therefore, they are dealt with jointly.

4. Section 158B(a) defines the block period to mean a period of previous years relevant to the ten assessment years preceding the previous year in which the search was conducted and the period upto the date of commencement of such search. Section 158BA(2) declares that the total undisclosed income relating to the block period shall be charged to tax at the rate specified in Section 113, as income of the block period irrespective of the previous year or years to which such income relates.

5. Of course, the returns for the assessment years 1997-98 and 1998-99 filed beyond the due date specified under Section 139(1) of the Act may be invalid returns, but, it cannot be disputed that the information contained in such belated returns showing the earning of corresponding income by the assessee is a valid information imparted by the assessee to the assessing officer. If that be so, a mere search after such filing of belated returns of income, as in the instant case, where the search was conducted on 22.6.99, by itself, will not entitle the revenue to treat the incomes admitted by the assessee in these years as undisclosed income of the assessee for the block assessment.

6. The above view is also supported by the decision of another Division Bench of this Court in T.C.No.268 of 2001 (between Commissioner of Income-tax v. JK.Narayanan) by judgment dated 1.4.2004.

7. Mr.N.Murali Kumaran, learned senior standing counsel appearing for the Revenue, invited our attention to the decision of a Division Bench of the Madhya Pradesh High Court in Dr.Brijesh Lahoti v. Commissioner of Income-tax [(2006) 282 ITR 349], to sustain the order of the assessing officer treating the income admitted by the assessee as undisclosed income. Admittedly, in the case before the Madhya Pradesh High Court, referred supra, there was no material to establish that the assessee had disclosed his income before the date of search, that means, the return was filed after the date of search by the department. Therefore, the decision of the Madhya Pradesh High Court in Dr.Brijesh Lahoti v. Commissioner of Income-tax [(2006) 282 ITR 349], cited supra, has no application to the facts of the present case.

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Accordingly, finding no question of law arises for consideration, the above tax case appeal is dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Assistant Registrar,
Income Tax Appellate Tribunal
Bench "D", Chennai.
2.The Secretary, Central Board
of Direct Taxes, New Delhi.
3.The Commissioner of Income Tax
(Appeals), Coimbatore.
4.The Deputy Commissioner of
Income-tax, Central Circle, Salem.

1 cc To Mr.N.Muralikumaran, Advocate, SR.19259.

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